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9 COMCAST OF ALAMEDA, INC. ET AL.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 JON HART, On Behalf of Himself and All
14 Others Similarly Situated, and On Behalf of
15 the General Public,

16 Plaintiff,

17 v.

18 COMCAST OF ALAMEDA, INC.;
19 COMCAST OF CALIFORNIA II, INC.;
20 COMCAST OF CALIFORNIA III, INC.;
21 COMCAST OF CALIFORNIA IX INC.;
22 COMCAST OF CALIFORNIA V INC.;
23 COMCAST OF CALIFORNIA VI INC.;
24 COMCAST OF CALIFORNIA X INC.;
25 COMCAST OF CALIFORNIA XIII INC.;
26 COMCAST CORPORATION; COMCAST
27 OF FRESNO, INC.; COMCAST OF MARIN
28 I, INC.; COMCAST OF MARIN II, INC.;
COMCAST OF NORTHERN CALIFORNIA
I, INC.; COMCAST OF NORTHERN
CALIFORNIA II, INC.; COMCAST OF
SACRAMENTO I, LLC; COMCAST OF
SACRAMENTO II, LLC; COMCAST OF
SAN LEANDRO, INC.; COMCAST OF
SIERRA VALLEYS, INC.; and DOES 1-250,

Defendants.

Case No. C-07-06350 PJH

**JOINT ADMINISTRATIVE MOTION
TO CONTINUE CASE
MANAGEMENT CONFERENCE
AND RELATED DEADLINES**

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 16-2(d) and 7-11, the parties file this joint
3 administrative motion seeking modification of the original Order Setting Case
4 Management Conference ("Case Management Order") in this action dated December 14,
5 2007. The parties seek an extension of the initial Case Management Conference from
6 March 20, 2008 to April 17, 2008, in order to accommodate the schedule of counsel.

7 In addition, the parties jointly propose a revised Case Management Schedule. The
8 purpose of these revisions to the Case Management Schedule would be two-fold: (1) to
9 allow for a decision, prior to initial disclosures or non-jurisdictional discovery, of
10 defendants' Motion for Judgment on the Pleadings; and (2) to permit determination at the
11 outset of any challenge to the Court's jurisdiction over the subject matter of this action
12 that plaintiff might bring.

13 **II. BACKGROUND**

14 Plaintiff John Hart ("Plaintiff") filed this putative class action in November, 2007,
15 in Alameda Superior Court. Plaintiff alleges that defendants (collectively "Comcast")
16 violated California law by allegedly advertising, offering and contracting to provide their
17 California customers of high speed internet with unrestricted access to the internet, yet
18 then restricting such customers' access to certain internet applications. Plaintiff alleges
19 that by misrepresenting the accessibility of the internet, Comcast has: (1) breached its
20 agreements with the putative class; (2) breached the covenant of good faith and fair
21 dealing; (3) violated the false advertising provisions of the California Legal Remedies
22 Act ("CLRA"); (4) violated the California False Advertising Law, Business &
23 Professions Code §17500, *et seq.*; and (5) violated the California Unfair Competition
24 Law ("UCL"), Business and Professions Code §17200, *et seq.* A portion of Plaintiff's
25 Sixth Cause of Action for violation of the "unlawful" prong of the UCL alleges that
26 Comcast's conduct to restrict access by members of the putative class to peer-to-peer file
27 sharing applications on Comcast's network violates both state and federal law.

28 Comcast contends that the allegations of the Complaint track then-recent filings at

1 the Federal Communications Commission ("FCC" or "Commission") seeking agency
 2 action to restrict or to dictate the use of particular network management practices. *See In*
 3 *re Free Press, et al., Petition for Declaratory Ruling*, WC Docket No. 07-72 (Nov. 1,
 4 2007); *In re Vuze, Inc., Pet. To Establish Rules Governing Network Management*
 5 *Practices by Broadband Network Operators, Broadband Indus. Practices, Petition for*
 6 *Rulemaking*, WC Docket No. 07-52 (Nov. 14, 2007). Subsequent to these filings, the
 7 Commission has issued two Public Notices seeking comment on these Petitions. *FCC*
 8 *Public Notice, Comment on Sought on Petition for Declaratory Ruling Regarding*
 9 *Internet Management Policies*, WC Docket No. 07-52 (Jan. 14, 2008); *FCC Public*
 10 *Notice, Comment Sought on Petition for Rulemaking to Establish Rules Governing*
 11 *Network Management Practices by Broadband Network Operators*, WC Docket No. 07-
 12 52 (Jan. 14, 2008). In addition, on February 25, 2008, the FCC convened a public *en*
 13 *banc* hearing regarding broadband network management practices.

14 This action was removed to federal court on December 14, 2007. Upon removal,
 15 the Court issued the Case Management Order. That Order set an initial Case
 16 Management Conference on March 20, 2008, with related deadlines for meet and confer
 17 regarding initial disclosures, ADR options, and for filing a Rule 26(f) Report and Joint
 18 Case Management Statement.

19 Since that time, the parties have discussed options for initial management of this
 20 action. Defendants advised plaintiff that defendants intended to move for judgment on
 21 the pleadings under Federal Rule of Civil Procedure 12(c) on or before March 14, 2008.
 22 The grounds for the Motion include: (1) Plaintiff's claims are preempted by federal law;
 23 (2) Plaintiff's claims are within the FCC's primary jurisdiction; and (3) Plaintiff's claims
 24 fail as a matter of California law.

25 As a matter of case management, defendants contend that initial disclosures and
 26 any discovery should be deferred until after a decision on defendants' Motion for
 27 Judgment on the Pleadings. Defendants believe that under Federal Rule of Civil
 28 Procedure 12(c), discovery for purpose of opposing their Motion for Judgment on the

1 Pleadings would not be necessary or appropriate, and that initial disclosures and
2 discovery are properly deferred until after a decision on defendants' Motion for
3 Judgment on the Pleadings. Defendants respectfully submit that after deciding
4 defendants' Motion, the Court as appropriate may set a further Case Management
5 Conference for consideration, if needed, of a plan for managing this case through initial
6 discovery and any motion for class certification.

7 Plaintiff suspects that this action fits within the Local Controversy and/or Home
8 State exceptions under the Class Action Fairness Act such that remand is appropriate, but
9 needs certain discovery to make this determination. Accordingly, Plaintiff wishes to
10 conduct discovery for the specific purpose of determining whether this Court has
11 jurisdiction of this action. Plaintiff contends that this discovery should occur at the
12 outset, and has proposed specific written jurisdictional discovery. Plaintiff proposes that
13 this discovery and any Motion to Remand be resolved at the outset of this action. In
14 addition, Plaintiff may wish to seek discovery pursuant to Federal Rule of Civil
15 Procedure 12(c) for the purpose of opposing defendants' Motion for Judgment on the
16 Pleadings.

17 Defendants dispute that discovery regarding jurisdictional issues is appropriate at
18 this stage of the action, and also maintain that the discovery proposed by Plaintiff goes
19 far beyond issues regarding jurisdiction. The parties continue to meet and confer
20 regarding the issue of jurisdictional discovery.

21 In addition, defendants have advised plaintiff of a scheduling conflict that has
22 arisen for defense counsel as to the date of March 20, 2008, the current date on which the
23 initial Case Management Conference is set. Plaintiff has agreed as a courtesy to continue
24 that date to April 17, 2008.

25 To accommodate these different positions, and as a matter of efficient case
26 management, the parties have agreed – and respectfully propose – that the appropriate
27 threshold issues in this case are: (1) resolution of defendants' Motion for Judgment on the
28 Pleadings; and (2) resolution of plaintiff's Motion to Remand, if any. As for initial

disclosures and non-jurisdictional discovery, if defendants' Motion for Judgment on the Pleadings is granted, then initial disclosures or discovery would be unnecessary. Similarly, any motion for remand should be determined before the Court embarks on a discovery and case management plan. While the parties disagree as to the propriety of any jurisdictional discovery, they continue to meet and confer on that topic.

III. RELIEF REQUESTED

In recognition of the foregoing, and in order to proceed most efficiently, the parties propose the following initial schedule for this action:

(1) Defendants shall serve their Motion for Judgment on the Pleadings on or before March 14, 2008, and set the Motion for hearing on May 21, 2008.

(2) The parties shall complete meet and confer regarding plaintiff's proposed jurisdictional discovery by March 20, 2008.

(3) On or before April 10, 2008, the parties shall present a joint Initial Case Management Conference Statement that shall be limited to the following topics:

(a) a schedule for further briefing and hearing on defendant's Motion for Judgment on the Pleadings;

(b) a procedure by which the Court will determine whether and what to extent plaintiff is entitled to discovery for purposes of determining any Motion to Remand;

(c) a date certain by which plaintiff will file any Motion to Remand; and

(d) a schedule for hearing any Motion to Remand.

(4) The initial Case Management Conference shall be set for April 17, 2008.

Discovery shall not be permitted pending the Case Management Conference, except that jurisdictional discovery may proceed pursuant to agreement of the parties or by order of the Court.

IV. CONCLUSION

The parties jointly move the Court for the relief requested.

1 Dated: March 13, 2008

DRINKER BIDDLE & REATH LLP

2 /S/ Michael J. Stortz
3 MICHAEL J. STORTZ

4 Attorneys for Defendants
5 COMCAST OF ALAMEDA, INC.;
6 COMCAST OF CALIFORNIA II, INC.;
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18 NORTHERN CALIFORNIA II, INC.;
19 COMCAST OF SACRAMENTO I, LLC;
20 COMCAST OF SACRAMENTO II, LLC;
21 COMCAST OF SAN LEANDRO, INC.;
22 COMCAST OF SIERRA VALLEYS, INC.

15 Dated: March 13, 2008

LEXINGTON LAW GROUP, LLP

17 /S/ Mark N. Todzo
18 MARK N. TODZO

19 Attorneys for Plaintiff
20 JON HART